



Business SA Submission in Reply

4 yearly review of
modern awards – *Plain
language re-drafting –
Hospitality Industry
(General) Award and
Restaurant Industry
Award*

**(AM2017/57 and
AM2017/59)**

13 June 2018

Introduction

1. Business SA provides these submissions in reply in accordance with the Fair Work Commission Full Bench Decision issued on 21 May 2018.¹

Hospitality Industry (General) Award 2010

Australian Hotels Association (AHA)²

2. Business SA agrees with the AHA's submission at [4(a)], reference in clause 10.7(a) to the 'employee's availability' is preferable.
3. Business SA agrees with the AHA's submission at [4(b)] regarding clause 10.11. Use of the word 'they' instead of 'the employee' is less clear than the previous exposure draft.
4. Business SA agrees with the AHA's submission at [5(c)].
5. Business SA agrees with the AHA's submission at [5(d)].
6. Business SA agrees with the AHA's submission at [5(e)].

United Voice (UV)³

7. Business SA does not oppose UV's submission on page 2 regarding clause 16.2.
8. Business SA does not agree with UV's submission on pages 2-3 regarding clause 16.3. UV's submission would alter the legal effect of the award. Our opposition is discussed in more detail below.
9. Clause 16.3 states: 'When the employer rosters an employee's breaks, they must make all reasonable efforts to ensure that breaks are spread evenly across the employee's shift' (emphasis added). The equivalent provisions in the current award are clauses 31.2(b) and (c). Both of these clauses state: 'Breaks should be spread evenly across the shift' (emphasis added).
10. UV has submitted clause 16.3 alters the entitlement to evenly spread breaks, UV has also stated 'Under clauses 31.2(b) and (c) of the current award, there is an obligation on employers to spread breaks evenly across the shift.' Business SA submits no such obligation exists. As indicated above the current award simply states that breaks 'should' be spread evenly, the current award does not state that breaks 'must' be spread evenly. While the current award encourages employers to evenly spread breaks across a shift, they are not required to do so. This recognises that in some circumstances the employer may not be able to guarantee breaks will be evenly spread.

¹ [2018] FWCFB 2710, [42].

² Australian Hotels Association, '[4 Yearly review of modern awards – Plain language re-drafting \(AM2016/15 and AM2014/272\)](#)', 30 May 2018.

³ United Voice, '[AM2016/15, AM2014/284 Restaurant Industry Award 2010 and AM2014/272 Hospitality Industry \(General\) Award 2010 – Plain language Re-Drafting](#)', 30 May 2018.

11. On this basis, Business SA opposes UV's proposed amendment to clause 16.3. UV has proposed clause 16.3 be amended to state "When the employer rosters an employee's breaks, they must ensure that the breaks are evenly spread across the employee's shift" (emphasis added). For the reasons provided above, Business SA submits use of the words 'must ensure' would alter the legal effect of the award.

Restaurant Industry Award 2010

United Voice (UV)⁴

12. Business SA submits UV's proposed change to clause 10.4(a), as detailed on pages 1-2, is unnecessary. UV has submitted 'The reference to an employer ensuring an employee is paid for their guaranteed hours has been removed. The reference is important in ensuring an employer is aware that the guaranteed hours are the minimum number of hours that the employee will be paid each week or roster cycle.'
13. Clause 10.4 relates to the employer and part-time employee agreeing on guaranteed hours and availability only – payment is required for all hours worked by the part-time employee per clause 10.13. Retaining reference to payment rates in clause 10.4 may cause readers to mistakenly believe the employer and part-time employee may also agree on the number of hours work to be paid; introducing the possibility this may differ from the number of guaranteed hours.

Conclusion

14. Business SA thanks the Fair Work Commission for accepting these reply submissions.

For further information from Business SA's policy team, please contact Karen van Gorp, Senior Policy Adviser, or Chris Klepper, Policy Adviser, (08) 8300 0000 or at karenv@business-sa.com or chrisk@business-sa.com.

⁴ Ibid.